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ABSTRACT

Older women, who comprise two-thirds of the retired U.S. population, share substantially less of the $1.3 trillion worth of over 800,000 private and public pension plans by every way of measurement. Of the one-in-five women receiving pension income, some obtain it from their own paid work history, while others are widows and divorced women who receive survivor's benefits from their husbands' plans. Of white men over the age of 65, 47 percent receive an average of $7,506 in annual pension income, whereas only 22.2 percent of white women get pensions averaging $4,390; 28.2 percent of Black men receive pensions averaging $5,102 and 15.4 percent of Black women receive $4,496; 28.1 percent of Hispanic men receive pensions averaging $5,594 and 7.1 percent of Hispanic women get pensions averaging $4,383. No law, federal or state, requires that private employers offer their employees retirement coverage of any kind except Social Security. Pension plans reward the long-term, steady worker with low mobility and high earnings; this conforms best to the white male work pattern. Private pension plans are regulated by the 1974 Employee Retirement Income Security Act (ERISA), the 1984 Retirement Equity Act (REA), and the 1986 Tax Reform Act (TRA). The reforms included in these laws are primarily not retroactive; thus it will be decades before women reach parity in pensions. Problems occur in the areas of vesting, age exclusions, part-time exclusions, portability, cost of living increases, and pension integration with Social Security. Hundreds of thousands of public pension plans have varying requirements that affect millions of women; thus government pensions represent a major area of unfinished business for women's pension rights. (Fifteen reference notes and 10 organizational resources are included in the paper.) (CML)

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GRAY PAPER

Older Women And Pensions: Catch 22

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- DEATH AN DYING: Staying in Control to the End of Our Lives (1986)

- DIVORCE AND OLDER WOMEN (1988)

Older Women and Pensions: Catch 22

I. INTRODUCTION

Pension funds in America represent one of the largest accumulations of capital in the history of the world. They are serious money, and nothing is taken more seriously by the financial world. Forty million active and retired workers presently participate in over 800,000 private and public pensions plans, whose worth exceeds **$1.3 trillion dollars,**[1] yet older American women, who comprise two-thirds of the retired population, share substantially less of this great national resource by every way of measurement. Thus pension policy is a matter of profound concern to older women, and of overriding importance to planners concerned with the implications of our rapidly aging American population.

This paper will include a summary of the pension problems faced by the woman earning her own pension, as well as those faced by the woman who is dependent upon the retirement or survivor's benefits of another.

II. A SMALL PIECE OF A BIG PIE

In 1950, only 10% of retired households received pension benefits.[2] Tax incentives and a burgeoning economy have improved this picture, so that in 1986, 45% of men and 22% of women over the age of 65 received pension income.[3]

Of the one-in-five women receiving pension income, some obtain it from their own paid work history. Others are widows and divorced women who receive survivor's benefits from their husbands' plans. When the figures are broken down by race and sex, a revealing picture emerges, illuminating the inequities in the American retirement income system, and showing a great need for reform: 47% of white men over the age of 65 receive an average of $7,506 in annual pension income (from all sources including public, private, and military pensions, but not

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Written by Fran Leonard, Attorney At Law, 1988. Editing by Suzanne Jackson, Laura Loeb and Ernestine Jackson.

including Social Security), while only 22.2% of white women get pensions averaging $4,390; 28.2% of Black men receive pensions averaging $5,102 and 15.4% of Black women collect an average of $4,496; 28.1% of Hispanic men receive pensions averaging $5,594 and 7.1% of Hispanic women get pensions averaging $4,383.[4] The groups of women with the highest representation of pension earners and the highest average pension earned (white at 22% and Black at $4,496) still fall below the groups of men with the lowest representation of pension earners and the lowest average pension income (Hispanic at 28% and Black at $5,102).

PERCENTAGE OF PERSONS RECEIVING PENSION INCOME IN 1986, AND AVERAGE PENSION INCOME OF PERSONS OVER 65 IN 1986, BY SEX AND RACE

	ALL RACES		WHITE		BLACK		HISPANIC	
	MEN	WOMEN	MEN	WOMEN	MEN	WOMEN	MEN	WOMEN
Percent with pensions	45.2%	21.5%	47.0%	22.2%	28.2%	15.4%	28.1%	7.1%
Average annual pension income	$7,384	$4,383	$7,506	$4,390	$5,102	$4,496	$5,594	$4,383

Source: Unpublished Census Bureau data, March 1987 Current Population Survey

Statistics such as these can be treacherous, of course: the average annual pension for white women could appear lower than that of Black women because of the higher proportion of white homemakers receiving small widow's annuities. In addition, the better pensions received by the small proportion of Black women who get pension income could reflect a bias towards public employment in the minority population brought on by discrimination in the private sector. Finally, these figures do not break down individuals by marital status, yet elderly singles living alone are nearly five times as likely to be poor as elderly couples.[5]

Many other factors are built into simple statistics such as these, but there's no denying that differences exist. A retirement system so profoundly affected by race, ethnicity, gender and marital status, must be changed so that the life's effort of all workers will result in a dignified retirement, uninhibited by wide disparities in income resulting from fringe benefit inequities during the working years. The pension pie is very big, it's the size of the slices that are the problem!

III. PRIVATE PLANS AND THE WORKING WOMAN'S REWARD

The impact of pension discrimination follows women in their various roles. The very people most expected to require income in old age (because of longevity) are handed a pension obstacle course of ominous dimensions. There are pension reducing factors lurking in almost every lifestyle choice a women can make: from homemaker to highly paid worker; from marriage to never-married to lesbian partnerships to divorce.

While pensions vary in their provisions and terms, the 1974 enactment of minimum federal standards for private pension plans (Employee Retirement Income Security Act[6] -- ERISA) makes it possible to discuss plans in the private sector as a group. Public plans -- federal, state and local -- will be discussed in a later section of this paper.

No law, federal or state, requires that private employers offer their employees retirement coverage of any kind except Social Security (which is only tangentially addressed in this paper). Mandatory pension coverage is on the agenda of aging and other progressive organizations, and has been introduced into Congress, but has not yet been passed into law.

Mandatory coverage is especially important to older women. Women in the paid labor force are clustered in the service sector, as well as in small businesses, where pension coverage is least likely to be found. The Department of Labor has reported that 89% of employees of businesses with over 100 employees were covered by pension plans in 1986,[7] while other researchers have found that only 23% of workers in small businesses (those with fewer than 100 employees) are covered. Of course, one should not be too optimistic about the apparent extent of pension coverage reported by these studies. Coverage is one thing; collecting a pension upon retirement is quite another, as we shall see.

Pension plans reward the long-term, steady worker with low mobility and high earnings. This happens to conform best to the white male work pattern. To the extent a worker's employment pattern deviates from this, the worker becomes a "loser" in the "pension game." Most pension plans are like insurance in that the cost of the plan decreases as the number of fortfeitures increases. Most plans are designed on a pyramid principle. They benefit from contributions from workers' pay (either by payroll deduction or by the employer as deferred compensation), but count on paying pension benefits at retirement to fewer than the number who paid in, usually to long-term employees such as owners and managers.

To give the pyramid a broad base of pay-ins and a narrow top of pay-outs, various obstacles are set up to defeat workers' expectations of ever receiving the pension. These include minimum lengths of employment (vesting) and other provisions discussed below. It is important for women and lower-paid men to recognize that, to the extent they are set up to be the losers under various pension programs, they are directly and deliberately being made to subsidize the "winners." There is nothing inadvertent or innocent about this system.

In addition, there are several provisions common to most plans, both public and private, that weigh against work patterns typical of women. Although ERISA was a much-needed reform, in its original form women were disproportionately disadvantaged by almost every qualification. The first edition of this paper (written in 1979, little more than five years after ERISA's enactment), was not alone in pointing out problems for women in nearly every ERISA provision. Since then a variety of reforms have been enacted, thanks to the partnership between pension reform advocates, women's organizations, aging organizations, some labor unions and enlightened congressional members and staffers. Selected ERISA provisions of special importance to women, including improvements brought about principally by the Retirement Equity Act of 1984 (REA) and the Tax Reform Act of 1986 (TRA), are discussed below. It is well to remember, however, that most of these reforms are prospective -- meaning that they affect only pensions earned after the effective date. Most provisions are not retroactive. Thus it will be decades before all the harm done to women's pension income is mitigated by these reforms.

Vesting: A worker must work long enough for one employer to be eligible for benefits, or forfeit the pension rights earned. This is known as the "vesting" requirement. If the employee vests, he or she will remain eligible to draw a pension from that employer, even if he or she quits and goes to work for another. The pension will be payable upon the former employee attaining the retirement age set in the plan, and will be smaller than it would have been had the employee remained under the plan for a working lifetime. A vested pension, no matter how small, is a property of no small import.

Before the TRA, 90% of pension plans required 10 years of employment under the plan before the employee vested.[8] ERISA's tolerance of ten-year vesting eliminated from private pension eligibility most of the women workers who chose to leave the workforce to raise families, or change jobs or seek further education or training. Women constitute a more mobile workforce than men, so the ten-year "cliff" vesting was a major obstacle for women retirees. TRA shortened the maximum cliff

vesting period to five years or an alternative graded vesting over three to seven years, a reform which will qualify millions more workers of both sexes for retirement benefits. Nevertheless, five years still represents an insurmountable obstacle for many workers, and women are overrepresented among them. Especially to assist women working in small businesses and professional corporations, Congress enacted "top-heavy" rules, with three-year "cliff" or two to six-year "graded" vesting, and/or non-integrated minimum benefit. (See later section on "integration.")

Age exclusions: ERISA originally permitted employers to exclude from the plan anyone under 25 years of age, and those persons hired within five years of the normal retirement age set by the plan (usually 65). In addition, if the worker continued to work after age 65, the plan did not have to continue to give pension credits for the work. These age exclusions worked to disqualify large numbers of women from participating in a plan, because the highest proportion of women in the workplace were between the ages of 20-24, after which women's participation sharply dropped off as women left to assume family responsibilities. An older woman who entered the workplace quite late in life because of a divorce or death of her husband or domestic partner could similarly be excluded. Thus, the age exclusions at both ends of her life penalized a woman for her middle years of home commitment -- a disqualification falling upon very few men. The REA lowered the minimum participation age to 21 for the purposes of accruing credits, and to 18 for the purposes of vesting.

Likewise, effective in 1988, the Omnibus Budget Reconciliation Act of 1986 (OBRA) removed the obstacle to giving retirement credits for work performed after the age of 65, as well as the exclusion for workers joining the plan within five years of retirement age. Amendments to the Discrimination in Employment Act (DEA) abolished mandatory retirement for most workers after 1986. Taken together, these changes are enormously helpful to older women. A woman can join an employer at age 60, vest in five years, at age 65, and continue to work after 65, accruing credits toward her eventual retirement.

Part-time exclusion: Many women do manage to be "long-term" employees by working part-time while handling family responsibilities. This is the doctor's bookkeeper who comes in Tuesdays and Thursdays for 30 years, or the tax preparer who works for three months every spring for 20 years. This predominately female employment pattern also fails to qualify for pension credit under most private plans. as ERISA permits employers to exclude persons who work less than 1000 hours per year, or 19 hours a week. The effect of this is to

remove yet another large group of employed women from the "pension game." The exclusions of part-timers and seasonal workers from the original act remain in ERISA despite reforms in other areas.

Break-in-service: Although five years may be required for vesting, the plan must permit workers who leave and return an opportunity to vest. Under the old rules, if the "break - in - service" equaled or exceeded the last period of employment, the worker forfeited all prior credits toward vesting. A woman who left her job after three years, then returned five years later, would have had to start her vesting period anew under most plans. Under REA, however, she would lose her credits toward vesting only if the a break-in-service exceeded five consecutive years or the length of her earlier employment, whichever is longer. In addition, a maternity/paternity leave feature has been added that removes from the break-in-service calculation up to 501 hours (about three months) for such leave.

Portability: If workers could take pension credits "with them" when they change jobs, as is done under social security, mobile women workers would benefit greatly. The lowered vesting requirement has diminished the importance of this need, but not eliminated it. Congress is considering several pieces of legislation in this area, but most focus on liberalizing the rules governing roll-over individual retirement accounts (IRA's).

Cost of living increases: ERISA does not require cost-of-living adjustments (COLA's) in private pensions, so COLA's are a rarity in the private sector (nor are they universal in the public sector). This produces the well-known phenomenon of the inflation-devastated pensioner on a fixed income, after a seven percent rate of inflation has halved real income in ten years. Sadly, even inflation "discriminates" by sex, due to women's greater longevity. A woman of 65 has an eight year greater life expectancy than a man of the same age, which means that she will be subject to nearly one more "doubling down" of her income before she dies than he will be. For example, if each has an income of $1,000 per month at age 65, it will buy $500 worth of goods when they are 75 (his death). She lives another eight years, dying at 83 with a purchasing power of about $300 per month. Women live longer, and die poorer. One can't help wondering if the tolerance for fixed retirement income is rooted in the fact of lower male life expectancy. Cost-of-living indexing should be recognized as an issue of major importance to older women.

Pension Integration with Social Security: The working woman faces another pension-reducing measure because of the

likelihood that she will be among the lowest-paid workers. "Integration" means that the private plan is integrated with the Social Security benefit. It is especially vicious to lower-paid workers. Before the 1986 TRA, for example, a plan would be permitted to define its pension benefit, when combined with Social Security, as amounting to 55% of the worker's last wage. A lower paid worker may find that her Social Security check is 55% of her last wage. Her pension check would then be zero. Thus, many workers ended up with no pension check even though they had worked a lifetime under pension coverage. The TRA prohibited integrating out more than 50% of a worker's pension, but only with respect to new accruals. Thus it will be years before this reform will take full effect. Because women are overrepresented among the lower-paid, averaging 70% of men's pay for the same work,[9] those whose pensions are reduced because of integration with Social Security are disproportionately female. Note that these are vested workers --the seeming "winners" of the game-- the long-distance runners who believe until the day they retire that they will have their full pension plus Social Security!

Individual Retirement Accounts: The Tax Reform Act of 1986 made sweeping changes in Individual Retirement Accounts (IRAs). Authorities had observed that participation in the IRA program was lowest among those earning less than $30,000 per year (76% of all taxpayers) and highest among those earning over $50,000. Furthermore, only one in eight workers not covered by a pension plan opened an IRA. Since the original idea behind the IRA was to help workers without pensions prepare for retirement, the overrepresentation of well-paid workers with pensions in the program and the low number of participants who did not have pension coverage caused policymakers to rethink the program and to attempt to return it to its original purpose.

Unfortunately, in working out the complexities of the reform legislation, millions of married women workers were disadvantaged. Generally, active participants in qualified pension plans can no longer deduct their IRA contribution (still the lesser of $2000 or 100% of earnings per year) from their taxable income if their adjusted gross income (AGI) is over $50,000 (married couple filing jointly). Between $40,000 and $50,000 AGI, the IRA contribution can be deducted proportionately. Below $40,000, even with pension coverage, the full IRA contribution can be deducted from taxable income. Although every paid worker, whether covered by a pension or not, can establish an IRA that will not be taxed until it is withdrawn, the tax deductible feature is only available as described.

The problem for women is that a married worker who is not covered by a pension is nevertheless considered to be an active

participant in a pension plan if his or her spouse is an active participant in a qualified plan.[10] For example, Mary is married to Joe, a high school principal. Mary works as a computer consultant, and their joint income is $55,000 per year. Joe is covered by the state teacher retirement system, and Mary has no pension. They can each contribute $2,000 per year to their IRA's, but neither can deduct their contribution from their taxable income, because Joe's pension and their joint income disqualifies them both. Because it is more likely that husbands have pensions than wives, this provision of the IRA statute has an unfavorable impact upon women, because greater numbers of women have neither a pension nor a deductible IRA under this rule. With the divorce rate among midlife and older couples at an all time high, it is shortsighted for policy-makers to assume that Joe's pension will be there for both to enjoy upon retirement. It is all too likely that Mary will not be in the picture when Joe collects, so the better policy would be to recognize the fragility of the modern marriage and allow each working spouse to qualify for deductible IRA on his or her own record.

The $250 per year contribution allowed for the unpaid homemaker remains in the law, so that a one-earner couple can contribute $2250 per year to an IRA, allocated between themselves however they like, so long as neither account exceeds $2000 per year. As with the working couple, this provision, by not permitting both members of the couple to prepare for their retirement with maximum ($2000) contributions to separate accounts, unjustifiably assumes that the marriage will remain intact until and through retirement. This policy is one of several instances of federal law lagging behind the states in recognizing the contributions of both spouses to the marital income (by whomever earned), and the resulting co-ownership of marital assets.

In addition, whether married or single, "active participation" in a pension plan is determined without regard for whether the worker has vested in the plan, or even joined it. Mere eligibility to join the plan will count as "active participation." Since women are more mobile workers and have a lower vesting rate than men, a disproportionate number of women workers will not qualify for deductible IRA's despite the fact that they will never qualify for a pension.

One improvement in IRA law since the first pension Gray Paper was written ten years ago is the new right of divorced persons receiving alimony or spousal support to count that income as earnings when establishing an IRA. However,since the limit on income for deductible contributions was established, this may no longer be an unadulterated boon for working divorced women. If, for example, $5,000 per year in spousal

support is added to her earnings, a schoolteacher earning $30,000 per year would no longer be eligible to deduct her IRA contributions from her taxable income.

IV. NOTHING FOR WIVES, NOT MUCH FOR WIDOWS

A woman dependent on her husband's earnings will be concerned with two elements of his retirement plan: first, does it pay a spousal (or dependent's) benefit while he is alive,and second, will there be a survivor's benefit to her after his death? The answer to the first, except for Social Security, is almost certainly no, and to the second is a firm **maybe**.

ERISA requires that pension plans provide their married workers with survivor's benefits, which means that unless the retiree elects otherwise, he or she will get a lower monthly check, of which a portion will continue to be paid to the survivor. The effect of this feature is to reduce the income of the couple below that of the single worker, because of the longer payout period for the two lives.

Mandatory survivor's benefits are rare, under either governmental or private plans. The usual practice is to reduce the survivor's check only if the dependent is the survivor. If the worker survives, the joint check is not reduced at all. This is an issue of some importance to older women, who wonder at the inequity of considering one-half a joint pension adequate for a widow, while the entire joint benefit is continued for the worker-widower.

ERISA compels private plans to award a survivor's benefit of no less than one-half of the retiree's benefits, unless this option is rejected in writing at retirement time. Formerly, this option was the retiring worker's alone. The spouse need never even have been informed of the decision, let alone have been asked to ratify it. Countless widows learned for the first time at the funeral that their husband's pension died with him. Since 1984, however, the REA has required that both marital partners give written consent before the survivor's benefit can be waived. This is a private pension reform of major dimensions for older women, especially homemakers who will have no other means of support beyond Social Security. Waiver of survivor's benefits under various public plans has fared differently, and is discussed in the section on public pensions.

Another trap remedied by the REA is this: formerly ERISA allowed survivor's benefits to be forfeited if the worker died before his plan's early retirement age, usually between 55 and 65. This happened to thousands of fully vested workers who died within a year or two of retirement age, and their widows got nothing. After REA, ERISA requires a plan to contain a pre-retirement joint and survivor benefit.

V. THE DIVORCED GAIN A FOOTHOLD

Originally only eight states adhered to the European notion of equal ownership rights of both spouses to marital property (community property). This is based on the premise that marriage is an economic partnership and the income earned and assets accrued are the property of both members of the partnership. Both spouses make a contribution toward the employee's ability to earn the wage and consequently, both own the fruits of that labor, including rights to the pension.

The remaining 42 states subscribed to the English, or "common law" system, where the marital property and income either belonged to the husband, or to the person whose name it was in (usually the husband). No state remains, strictly speaking, a common law marital property state today. The title theory of marital property ownership is dead in all jurisdictions, except, unfortunately,some federal statutes such as the Social Security Act, including its sections respecting Medicaid. The 42 non-community property states exist in a kind of property limbo. They have established a theory of equitable division upon divorce, which means that the marital property will be divided <u>not</u> according to (1) whose name it is in (common law title theory); nor (2) on a basis of equal ownership (community property); but (3) according to what the judge thinks is fair (equitable distribution). Since after a long marriage, the financial interest in the pension is likely to be exceeded only by the equity in the house, the system of marital property used in her home state is of real concern to any midlife or older woman facing divorce.

Of course, recognizing equal ownership rights in all marital property is not so great an advance if the state in question refuses to recognize certain assets as property in the first place. There remain states that refuse to recognize pensions as marital property, preferring to regard them as "expectancies" or "gratuities." And among those states that do recognize a marital property interest in the pension, the extent of that interest varies widely. Some states will estimate the value of and divide (at the time of divorce) even an unvested pension. Most recognize only a vested pension, and some only a "mature," that is, presently payable, interest. In other words, the worker has to be of retirement age in most states before the pension will be assigned a value and divided at divorce.

In addition, two methods of dividing the pension are used, often within the same state. The first is to give an actual value to the pension, and give an offsetting lump sum to the nonearner from other marital property (cash-out). The other method is to wait until the pension is payable, and then have

the plan administrator pay it to the parties in two separate checks. Obviously, the desirability of either method varies depending on the circumstances, including the age of the parties, their health, the tax laws and their present cash needs. The cash-out is usually discounted to reflect its value as "a bird in the hand." The future payout, after all, embodies a risk that it will never be paid or will be greatly reduced by the early demise of the earner.

Since this paper's first writing there have been several developments in pension and marital property laws which are helpful to the midlife or older woman upon divorce. ERISA was amended by the REA to clarify the intent of Congress that pension plan administrators adhere to state divorce orders, including awarding some or all of the survivor's benefits to the former spouse. Furthermore, the divorced spouse is entitled to her share no later than the earliest retirement age of her former spouse, and can take her share in any way allowed a retiree under the plan; that is by lump sum, or by term or life annuity, if the plan permits.

The problems facing divorced women are the most complex in the pension reform field, and because of conflicting laws, they will be the most difficult to resolve. It is here that women must be particularly alert to the need for unity. Conflict between older divorced women and married and unmarried women only serves to defeat and delay the recognition of increased property rights and greater retirement security for all women.

VI. PUBLIC PENSIONS

In addition to the hundreds of thousands of private plans affected by ERISA and its amendments under the REA and the TRA, there are hundreds of thousands of plans unaffected by these federal laws. Although private pensions are not directly regulated by state statutes (except tangentially, such as in marital property division), myriads of state and local laws govern state and local pensions. The massive federal public pensions, such as the Civil Service Retirement System, military pensions, foreign service pensions and railroad retirement are creatures of their own congressional acts. Although they may share some characteristics with ERISA, they are not affected by its provisions.

Social Security Offset: In an "off-set," Social Security reduces its benefits for certain public pension beneficiaries. In the dependent's offset, any recipient of a public pension will have their dependent's (spouse, ex-spouse, widow, etc.) social security benefit lowered by up to 2/3 of the value of her public pension. If she receives a $1000 per month civil

service pension, for example, and is entitled to $500 per month Social Security as a widow, her widow's benefit will be cut to nothing, because 2/3 ($666) of the public pension, completely offsets the Social Security benefit. Because most people entitled to the dependent's (spousal) benefit are women, the offset has significantly reduced the retirement income of women, millions of whom are modestly situated.

The second type of offset came into being in the 1983 Social Security amendments, when Social Security coverage was extended to government workers. Concerned that the dual retirement benefits would constitute a windfall to many government workers, Congress decreed an offset of the Social Security benefit of up to one-half of the public pension. This "windfall" offset mostly affects workers who began working after 1985.

Thousands Upon Thousands of Public Plans: As separate enactments, government plans diverge in many ways. Even public plans within one jurisdiction differ: for example, different federal plans treat the marital interest in different ways. Civil Service, like ERISA, leaves the determination up to state courts, while the foreign service and CIA plans divide the pension between the divorcing partners according to a formula based on length of marriage and the coincidence of the public employment with the tenure of the marriage. The military now permits state courts to require military personnel to provide a survivor's annuity to their former wives (who can then remarry after age 55 without forfeiting the benefit)[11], but former wives of civil service workers are entitled to a 55% survivor's annuity only if they were divorced after September, 1978, are at least 55 years of age, were married at least 10 years, during their spouse's civil service work, and are ineligible for any other annuity (public or private) except Social Security.[12]

In the states, chaos reigns. In some states, public pensions are organized according to political subdivision: village, townships, counties. Others are organized according to occupational class: firefighters, police, sheriffs, teachers, judges, and even such subclasses as traffic police, court interpreters and lifeguards. Yet others subscribe to a departmental system: water department, school district, street department.

Some populous states have come close to unifying their systems. In California and New York,for example, most political subdivisions, occupations and departments are participants in one huge state plan, (except teachers, who have their own statewide plan).

What is the significance of this multitude of plans on the pension interests of midlife and older women? Plenty. Reforming such a hydra-headed monster is nearly impossible -- it's like trying to hit a moving target.

Contemplate, for a moment, the situation in New Jersey just with respect to survivor's benefits: a judge's widow is entitled to a survivor's benefit of 25% of his final salary, so that upon his death, their $50,000 income becomes $12,500 for her (the widow's mite lives!). The widow of a prison guard likewise get 25% of his final pay, but she forfeits it if she remarries at any age -- while the widower of a prison guard doesn't collect a survivor's benefit unless he was dependent on his wife (the guard) for at least 1/2 his support for the 12 months prior to her death.[13] While this provision may superficially appear to favor women, in fact women workers are disadvantaged because their work purchases a less valuable survivor's benefit than does that of their male colleagues. The widow of a New Jersey local public lawyer (perhaps a district attorney or public defender) gets 25% of his final pay for her lifetime-remarriage is not a forfeit. And county clerk's widows get 1/3 of final pay, forfeit on remarriage. If the employee worked for a county with a population under 800,000, a survivor's benefit is dependent upon five years of marriage before death, remarriage results in forfeiture, and widowers have the same benefits as widows. But for employees of counties with populations over 800,000, widows and widowers alike cannot remarry, and must have been married prior to retirement and prior to age 50 and be less than 15 years younger than the employee at the time of the marriage if the marriage occurred while the employee was a member of the system! Essex County requires the widower to be dependent or incapable of earning a living in order to qualify for a survivor's benefit. The winners seem to be sheriff's widows or widowers, who get 1/2 the decedent's final salary, but only until remarriage. YOU SEE THE PROBLEM!

When you multiply the single area of survivor's benefits by all the other variables, such as vesting, probability, part-time exclusions, etc., you can readily understand the fractured state of public pensions.[14] And this state of affairs affects millions of people -- millions of women who work as teachers, librarians, clerks, nurses, professors, lawyers, welfare workers, police --etc., etc., etc.! There are over 17 million full and part-time government workers, 14 million of them in state and local employment, with a combined payroll of almost $30 billion.[15] Government pensions represent a major area of unfinished business for those concerned with women's rights to a fair slice of the juicy pension pie.

VII. EDUCATE, LEGISLATE, LITIGATE, AND NEGOTIATE

Educate: Women must make their interests known. Pension activists must watch out for occasions where pensions are debated, and ensure that women's issues are on the agenda. Women working in large companies or unions must come to recognize their unified clout. Their collective force could cause their plan's funds to be placed constructively, and if the fund holds controlling power in other corporations, this power could be used to upgrade the pensions there.

Because of the multiplicity of state and local public plans, and their expression in state and local statutes and regulations and policies and resolutions, reform by legislation is all but impossible. Public education is the best way to attack the inequities in state and local government plans. Public pension "consumers" must be educated as to what a good pension looks like, then encouraged to demand the same provisions in every public pension in the country.

Legislate: Older women cannot wait for Congress to do what is right on its own. Private pensions are especially subject to legislative reform because the statutory frameworks are already enacted. Letter-writing, testifying, and supporting helpful amendments will make a difference.

Changing legislation on the state level is more appropriate for public pensions, and marital property division methods. Organizing through your local OWL Chapter can be an effective way to achieve state legislative reform.

Litigate: Women who are participants in a private plan have rights under ERISA to appeal an adverse plan of action to the Department of Labor, and ultimately, to sue in federal court. Plan beneficiaries such as wives and widows have similar rights. Pension litigation has become a recognized field of law, with an increasing number of lawyers specializing in the area, or willing to take such cases on. Because ERISA is complex, it is recommended that an aggrieved participant or beneficiary only seek legal advice from an expert in the field. This is not the place for the family lawyer.

Another arena for individual pension litigation is in marital property settlements. If a state has a harsh rule on pension rights, and does not recognize the fund as divisible marital property, then creative alimony settlement should be considered.

Negotiate: Women employees should get on the agenda at contract negotiation time. Unions should be educated to the requirements of their women members, and make these the "bottom

line" at the bargaining table. It is important to remember that the ERISA standards outlined in this paper are minimum standards under federal law. A plan cannot, for example, require a vesting period of 15 years, a minimum coverage age of 30, or a "part-time" definition of 30 hours per week. On the other hand, it can provide a one-year vesting period, no minimum age, and cover all part-time employees, regardless of hours worked.

In addition to insisting on a good pension plan at bargaining time, it is appropriate for prospective employees to question the personnel officer about the plan in force. If a job is turned down because of unsatisfactory coverage (especially appropriate in the case of a permanent "part-time" job), let the interviewer know why, and follow-up with a letter to management.

NOTES

1. Employee Benefit Research Institute (hereafter cited as EBRI), reported in the San Francisco Chronicle, 4/14/88.

2. Retirement Equity Act of 1984: Its Impact on Women, U.S. Department of Labor, Women's Bureau, 1986.

3. U.S. Census Bureau, Current Population Survey, 3/87.

4. Ibid.

5. Old, Alone and Poor, Commonwealth Commission on Elderly People Living Alone (1987) at OR-1.

6. 29 U.S.C. Section 1001 et seq.

7. Department of Labor, Bureau of Labor Statistics, Washington Post, 7/9/87.

8. Department of Labor, Bureau of Labor Statistics, 1986.

9. U.S. Census Bureau, as reported in the San Francisco Chronicle, 2/17/88.

10. Internal Revenue Code, Section 219(g)(1).

11. Department of Defense Authorization Act of 1986.

12. 1954 amendments to the Civil Service Retirement Act.

13. 43:7-9, New Jersey Statutes Annotated.

14. See generally Galer, Mary Jane and Stakes, Mary E., Women and State Pensions: A Legislative Guide to Issues of Equity (1984).

15. U.S. Census Bureau, Public Employment in 1985, GE85 No. 1.

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